

TENNESSEE BOARD OF PHARMACY
NOVEMBER 15-16, 2010
227 FRENCH LANDING, POPLAR ROOM
NASHVILLE, TN

BOARD MEMBERS PRESENT

Bettie K. Wilson, D.Ph., President
Larry Hill, D.Ph., Vice President
Brenda Warren, D.Ph.
Joyce McDaniel, Consumer Member
Jason Kizer, D.Ph.
Charles Stephens, D.Ph.

BOARD MEMBER ABSENT

Nina Smother, D.Ph.

STAFF PRESENT

Terry Grinder, Acting Director
Elizabeth Miller, Director of Health Related
Boards
Benjamin Mezer, Assistant General Counsel
Sheila Bush, Administrative Manager
Terry Grinder, Pharmacy Investigator
Tommy Chrisp, Pharmacy Investigator
Scott Denaburg, Pharmacy Investigator
Richard Hadden, Pharmacy Investigator

The Tennessee Board of Pharmacy convened on Monday, November 15, 2010, in the Poplar Room, 227 French Landing, Nashville, TN. A quorum of the members being present, the meeting was called to order at 9:00 a. m., C.S.T., by Dr. Bettie Wilson.

Dr. Wilson recognized former board members Reggie Dilliard, Julie Fraizer and Todd Bess that were in the audience. Dr. Wilson also welcomed students from the University of Tennessee. Dr. Wilson explained to the students that the responsibility of the board is to protect the health, safety and welfare of the citizens in the State of Tennessee.

Office of General Counsel and Legal Report

Mr. Mezer informed the board that there are a total of 28 cases in the Office of General Counsel, 2 cases from 2008, 5 cases from 2009 and 21 cases for 2010.

1. Case No.: L08-PHR-RBS-2008000051

Respondent was convicted of misdemeanor for stealing water from the city.

Prior discipline: none

Recommendation: dismiss

Dr. Kizer made the motion to **accept counsel's recommendation**. Dr. Warren seconded the motion. The motion carried.

2. Case No.: L03-PHR-RBS-2003133131

Respondent was charged with BCBS fraud. He was found not guilty because his wife pled guilty

Prior discipline: none

Recommendation: dismiss

Dr. Hill made the motion to **accept counsel's recommendation**. Dr. Kizer seconded the motion. The motion carried.

3. Case No.: L09-PHR-RBS-2009002511

Respondent pharmacy was alleged to not perform proper DURs on one patient. After a review of the pharmacy records, the pharmacy and pharmacists performed proper DURs and the refills in question were not outside the normal amount.

Prior discipline: none

Recommendation: dismiss

Dr. Warren made the motion to **accept counsel's recommendation**. Dr. Hill seconded the motion. The motion carried.

4. Case No.: L08-PHR-RBS-2008001471

Complaint was made by the FDA concerning a possible wholesaler operating without a license. After two years, no information was provided to the Board.

Prior discipline: none

Recommendation: dismiss

Dr. Hill made the motion to **accept counsel's recommendation**. Ms. McDaniel seconded the motion. The motion carried.

5. Case No.: L09-PHR-RBS-2009001781

Complaint alleges that respondent pharmacy was filling forged and fake prescriptions. After investigation, it was determined that it was the technician who would write down the scripts as call ins and the pharmacist would fill them, not knowing they were not valid.

Prior discipline: none

Recommendation: dismiss, will investigate the technician

Dr. Kizer made the motion to **accept counsel's recommendation**. Ms. McDaniel seconded the motion. The motion carried.

6. Case No.: L10-PHR-RBS-2010001981

Respondent voluntarily surrendered his license in NH. It is not clear if he reported this to the board, because his file is missing from the file room. There is no information from the NH board because he retired it during the investigation.

Prior discipline: none

Recommendation: dismiss

Dr. Hill made the motion to **accept counsel's recommendation**. Dr. Warren seconded the motion. The motion carried.

7. Case No.: L10-PHR-RBS-2010001571

Complaint alleges that the respondent hospital reused Advair inhalers. After investigation, it was determined that this was done by the nurses and the pharmacy had nothing to do with it.

Prior discipline: none

Recommendation: dismiss, refer to HCF

Dr. Hill made the motion to **accept counsel's recommendation**. Dr. Warren seconded the motion. The motion carried.

8. Case No.: L10-PHR-RBS-2010001671

Respondent forged her PIC's name on a DEA 222 form. She replied that the medication needed to be ordered, but investigation revealed that the PIC was not on an extended vacation and was able to order the medications her self. Respondent pharmacist also filled a prescription for her technician that was obviously a forgery. The prescription was written over with a magic marker that looks very suspicious. The prescription was also written by a pain clinic in KY that is 3 hours away from this pharmacy.

Prior discipline: none

Recommendation: LoW for the 222 form, LoW for filling the prescription, the technician has already been authorized to be revoked.

Dr. Warren made the motion to issue a **Letter of Warning** citing poor professional judgment for filling the prescription. Ms. McDaniel seconded the motion. The motion carried. Dr. Warren made the motion to **authorize a formal hearing** to not allow the

Respondent to be a PIC for three (3) years and a \$1000.00 civil penalty for forging her PIC's name on the DEA 222 form. Dr. Kizer seconded the motion. The motion carried.

9. Case No.: L10-PHR-RBS-2010001711

Complaint alleges that respondent store is selling antibiotics without a license and without prescriptions. No information was provided as to the patients and no other information was available.

Prior discipline: none

Recommendation: dismiss

Dr. Warren made the motion to **accept counsel's recommendation**. Ms. McDaniel seconded the motion. The motion carried.

10. Case No.: L10-PHR-RBS-2010001941

Respondent technician was terminated for failing to take a UDS. There was no indication of losses at the pharmacy.

Prior discipline: none

Recommendation: dismiss

Dr. Hill made the motion to **accept counsel's recommendation**. Dr. Kizer seconded the motion. The motion carried.

11. Case No.: L10-PHR-RBS-2010001011

Respondent dispensed one out of date drug.

Prior discipline: none

Recommendation: LoW

Dr. Kizer made the motion to issue a **Letter of Warning**. Dr. Hill seconded the motion. The motion carried.

12. Case No.: L10-PHR-RBS-2010001611

Complainant alleges that her Nortriptyline 50mg was filled as Amitriptyline HCL 50mg. The pharmacy replied that the technician entered the prescription into the system incorrectly. Counseling was offered on this new Rx by the tech.

Prior discipline: none

Recommendation: LoW for dispensing, authorize formal hearing, \$1,000 cp to dispensing, \$1000 cp to pharmacy, LoI to PIC

Dr. Warren made the motion to issue a **Letter of Warning** for the dispensing, **authorize a formal hearing** with a \$1000.00 civil penalty to the dispensing pharmacist, a \$1000.00 civil penalty to the pharmacy and a **Letter of Instruction** to the PIC. Ms. McDaniel seconded the motion. The motion carried.

13. Case No.: L10-PHR-RBS-2010001241

Complainant alleges that her young son's prescription for asmanex 110mg was filled as asmanex 220mg. She was also not given counseling.

Prior discipline: none

Recommendation: LoW for dispensing, authorize formal hearing: \$1000 cp for dispensing and \$1000 to pharmacy for counseling and LoI to PIC for counseling.

Dr. Warren made the motion to issue a **Letter of Warning** for the dispensing, **authorize a formal hearing** with a \$1000.00 civil penalty to the dispensing pharmacist, a \$1000.00 civil penalty to the pharmacy for a counseling violation and a **Letter of Instruction** to the PIC for a counseling violation. Dr. Hill seconded the motion. The motion carried.

14. Case No.: L10-PHR-RBS-2010002241

Respondent technician admitted to loss prevention to forging prescriptions for 160 Hydrocodone 10/325. The technician sold the drugs.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Kizer made the motion to **authorize a formal hearing** for revocation. Dr. Hill seconded the motion. The motion carried.

15. Case No.: L10-PHR-RBS-2010002201

Respondent technician admitted to loss prevention to stealing approximately 2000 Hydrocodone 10/500 for personal use.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Kizer made the motion to **authorize a formal hearing** for revocation. Dr. Hill seconded the motion. The motion carried.

16. Case No.: L10-PHR-RBS-2010002181

Respondent was convicted of felony mail fraud and was sentenced to 5 years of probation.

Prior discipline: none

Recommendation: authorize formal hearing, 5 year probation

Dr. Hill made the motion to **authorize a formal hearing** for an five (5) year probation and cannot be PIC for the length of the probation. Dr. Kizer seconded the motion. The motion carried.

Reinstatement

Lois Hoppstein, D.Ph.

Dr. Grinder introduced Dr. Hoppstein to the board. Dr. Hoppstein is requesting to have her license reinstated. Dr. Hoppstein's license was revoked on January 21, 2010 by the board. After discussion, Dr. Warren made the motion to reinstate the license. Dr. Kizer seconded the motion. The motion carried. Dr. Hoppstein's license will be on fifteen (15) year probation from November 15, 2010 to November 15, 2025, with the following conditions:

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b);
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Dr. Jeff Easterly, except in the case of an emergency or upon proper referral from the Respondent's primary physician. The Respondent shall immediately

- notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;
- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from the physician other than the Respondent's primary physician or from any other health care providers, such as a nurse practitioner, physician's assistant or psychiatrist;
 - (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
 - (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
 - (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacist Recovery Network for as long as the Respondent is on probation. In the event that the sampling indicates the presence of drugs for which the Respondent does not have the valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
 - (g) The Respondent shall comply with all terms and conditions of the extended aftercare contract he entered into with Tennessee Pharmacist Recovery Network (TPRN). Respondent shall return a copy of said contract with this Consent Order to the Board office;
 - (h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years; however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause; The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
 - (i) The Respondent shall provide written notice requesting an active license; satisfy all past due continuing pharmaceutical education; and pay all cumulative license renewal fees and applicable penalties.

James Catron, D.Ph.

Dr. Grinder introduced Dr. Catron to the board. Dr. Catron is requesting to have his license reinstated. Dr. Catron's license was revoked on May 5, 2008 by the board. After discussion, Ms. McDaniel made the motion to grant probation. After further discussion, Ms. McDaniel withdrew

the motion. Dr. Kizer made the motion to reinstate the license. Ms. McDaniel seconded the motion. The motion carried. Dr. Catron's license will be on fifteen (15) year probation from November 15, 2010 to November 15, 2025, with the following conditions:

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b);
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Dr. Jim Williams, except in the case of an emergency or upon proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office of the name of his primary physician each time the Respondent changes primary physicians;
- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from the physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacist Recovery Network for as long as the Respondent is on probation. In the event that the sampling indicates the presence of drugs for which the Respondent does not have the valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- (g) The Respondent shall comply with all terms and conditions of the extended aftercare contract he entered into with Tennessee Pharmacist Recovery Network (TPRN). Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (h) The Respondent shall not serve as pharmacist-in-charge for a period of five (5) years; The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not

work at more than one (1) pharmacy location at the same time without the permission of the Board;

- (i) The Respondent shall provide written notice requesting an active license; satisfy all past due continuing pharmaceutical education; and pay all cumulative license renewal fees and applicable penalties.

Dr. Stephens arrived at 1:00 p.m.

Clayton C. Arwood, Sr., D.Ph.

Dr. Grinder introduced Dr. Arwood to the board. Dr. Arwood is requesting to have his license reinstated. Dr. Arwood's license was revoked on January 26, 2006 by the board. After discussion, Ms. McDaniel made the motion to defer Dr. Arwood's request for reinstatement until he can reappear with an attorney and submit an evaluation from his physician concerning his competency to practice pharmacy. Dr. Kizer seconded the motion. The motion carried.

Theresa Stooksbury, RT

Dr. Grinder introduced Ms. Stooksbury to the Board. Ms. Stooksbury is requesting to have her registration reinstated. Ms. Stooksbury's registration was revoked by the board at the March 7-8, 2006 board meeting. Ms. Stooksbury appeared before the board at the September 21-22, 2010 meeting and her request to reinstate was deferred until the next scheduled board meeting and Ms. Stooksbury was asked to provide documentation of a current evaluation from her physician.

Ms. Stooksbury presented to the board the requested documentation. After discussion, Ms. McDaniel made the motion to reinstate Ms. Stooksbury's pharmacy technician registration. Dr. Kizer seconded the motion. The motion carried.

Request to Appear

Robert Neznok, D.Ph.

Dr. Grinder introduced Dr. Neznok to the Board. Dr. Neznok is applying for license as a pharmacist by reciprocity in the State of Tennessee. Dr. Neznok's application was presented to the board at the September 21-22, 2010 board meeting. Dr. Neznok answered yes to the questions that asked "Have you ever voluntarily surrendered your pharmacist license or any pharmacist registration issued by a federal or state controlled substance authority?" "Have you ever been charged or convicted (including a nolo contendere plea or guilty plea) of a felony or misdemeanor (other than minor traffic offenses) whether or not sentence was imposed, suspended, expunged, or whether you were pardoned from any such offenses?" and "Has your pharmacist license in any jurisdiction ever been revoked, suspended, restricted, terminated or otherwise be subject to disciplinary action (public or private) by any board of pharmacy or other

state authority?” The board voted to defer Dr. Nezek’s application until he could appear before the board.

Dr. Wilson asked Dr. Nezek explain what lead the voluntarily surrendering of his pharmacist license. Dr. Nezek stated the he voluntarily surrendered his Alabama pharmacist license January 2008, because of a complaint from his employer that he had taken some controlled substances from his job without a prescription. Dr. Nezek stated that the drugs were for his spouse who is now deceased. When he applied for reinstatement in August 2008, his Alabama licenses were reinstated with five (5) year probation. Dr. Hill asked Dr. Nezek what were the drugs that he was accused of filling without a prescription. Dr. Nezek stated that it was generic alprazolam, hydrocodone and some sleeping pills. After discussion, Dr. Stephens made the motion to approve Dr. Nezek’s application for reciprocity once all the requirements have been met. Ms. McDaniel seconded the motion. The motion carried.

Application Review Pharmacist

James Kirk Meyer, D.Ph.

Dr. Meyer is applying for license by reciprocity in the State of Tennessee. Dr. Meyer answered yes to the question that asked “Has your pharmacist license in any jurisdiction ever been revoked, suspended, restricted, terminated, or otherwise been subject to disciplinary action (public or private) by any board of pharmacy or other state authority”. Dr. Meyer was disciplined by the Texas Board of Pharmacy on November 19, 2002 for error in prescribing, dispensing or administering medication and was ordered to complete an additional six hours of continuing education relating to the prevention of dispensing errors. On May 8, 2008, Dr. Meyer was disciplined by the Texas Board of Pharmacy for an unregistered technician and was fined \$500.00. Dr. Meyer’s pharmacist license in Texas is active and in good standing.

After discussion, Ms. McDaniel made the motion to approve Dr. Meyer’s application for license by reciprocity once he has successfully completed all requirements. Dr. Hill seconded the motion. The motion carried.

Christel Lynn Bird

Dr. Bird is applying for license by reciprocity in the State of Tennessee. Dr. Bird answered yes to the question that asked “Has your pharmacist license in any jurisdiction ever been revoked, suspended, restricted, terminated, or otherwise been subject to disciplinary action (public or private) by any board of pharmacy or other state authority?” Dr. Bird was disciplined by the Arizona Board of Pharmacy on May 7, 2009 for error in prescribing, dispensing or administering medication. She was order to pay \$1000.00 fine and complete eight hours of continuing education of ACPE course. Dr. Bird’s pharmacist license in Arizona is active and in good standing.

After discussion, Dr. Stephens made the motion to approve Dr. Bird's application for license by reciprocity once she has successfully completed all requirements. Dr. Warren seconded the motion. The motion carried.

Monifa Jalo

Dr. Jalo is applying for licensure by reciprocity in the State of Tennessee. Dr. Jalo answered yes to the question that asked "Has your pharmacist license in any jurisdiction ever been revoked, suspended, restricted, terminated, or otherwise been subject to disciplinary action (public or private) by any board of pharmacy or other state authority?" and "Have you ever been charged or convicted (including an nolo contendere plea or guilty plea) of a felony or misdemeanor (other than minor traffic offenses) whether or not sentence was imposed, suspended, expunged, or whether you were pardoned from any such offense? Dr. Jalo was convicted for committing theft by taking and identity theft in 1998 and sentence to the 1st Offender probation for felony theft during her first year of pharmacy school. On October 15, 2003 she was issued a valid license with the Georgia Board of Pharmacy. On May 3, 2005 Dr. Jalo's 1st Offender status was revoked after she failed to make restitution and was re sentenced as a felon. On August 30, 2006, the Georgia Board of Pharmacy revoked Dr. Jalo's pharmacist license for three months for not notifying the board of her felony conviction within 10 days. Dr. Jalo's pharmacist license in Georgia is active and in good standing.

After discussion, Ms. McDaniel made the motion to approve Dr. Jalo's application for licensure by reciprocity. After further discussion, Dr. Stephens made the motion to defer Dr. Jalo's application until she can appear before the board. Dr. Warren seconded the motion. The motion carried.

Darius Edward Arabghani

Dr. Arabghani's application was presented at the September 21-22, 2010 board meeting. His application was deferred until additional information could be submitted. Dr. Arabghani answered yes to the question that asked "Have you ever been convicted of a felony or misdemeanor other than a routine traffic violation?" He had a misdemeanor charge January 2005 and had to pay a fine. This charge has been expunged. On April 5, 2007 Dr. Arabghani entered a motion to dismiss and notice of plea agreement for intoxication and disorderly conduct and was ordered to pay \$562.00.

Dr. Arabghani submitted the additional information requested by the board. After discussion, Ms. McDaniel made the motion to approve Dr. Arabghani's application for licensure by examination once he successfully completes the requirements. Dr. Hill seconded the motion. The motion carried.

Lenard N. Shaw

Dr. Shaw is applying for licensure by reciprocity in the State of Tennessee. Dr. Shaw answered yes to the questions that asked "Have you ever been charged or convicted (including an nolo contendere plea or guilty plea) of a felony or misdemeanor (other than minor traffic offenses)

whether or not sentence was imposed, suspended, expunged, or whether you were pardoned from any such offense? and “Are you presently or have you within the past five years ever participated in a chemical substance rehabilitation program? Dr. Shaw had a DUI in July 2002 in FL. He entered a rehab program in Tampa, FL from October 2, 2006 until January 2, 2007. He signed a five year contract with a PRN program January 2007. Dr. Shaw’s pharmacist license in Florida is active and in good standing.

After discussion, Dr. Stephens made the motion to defer Dr. Shaw’s application for licensure by reciprocity until he can appear before the board or until Dr. Shaw submits documentation concerning his contract with the PRN program and from the Florida Board of Pharmacy. Dr. Warren seconded the motion. The motion carried.

Walter William Gauger

Dr. Gauger is applying for licensure by reciprocity in the State of Tennessee. Dr. Gauger answered yes to the question that asked “Has your pharmacist license in any jurisdiction ever been revoked, suspended, restricted, terminated, or otherwise been subject to disciplinary action (public or private) by any board of pharmacy or other state authority?” On August 20, 1980, Dr. Gauger’s pharmacist license was disciplined by the Wisconsin Board of Pharmacy for error in prescribing, dispensing or administering medication. Dr. Gauger’s license was suspended for three months, stayed upon the condition that he shall make all pharmaceutical purchase records available for inspection. On December 3, 1980 the Wisconsin Board of Pharmacy extended the length of the stayed suspension to twelve months with the same conditions. Dr. Gauger’s pharmacist license in Wisconsin is active and in good standing.

After discussion, Dr. Stephens made the motion to approve Dr. Gauger’s application for licensure by reciprocity. Dr. Kizer seconded the motion. The motion carried.

Maxine Virginia Snively

Dr. Snively is applying for licensure by reciprocity in the State of Tennessee. Dr. Snively answered yes to the question that asked “Have you ever voluntarily surrendered your pharmacist license or any pharmacist registration issued by a federal or state controlled substance authority?” Dr. Snively stated that she voluntarily surrendered her Missouri, Tennessee and Florida pharmacist’s license. Dr. Snively’s licenses in those states have expired.

After discussion, Dr. Warren made the motion to approve Dr. Snively’s application for licensure by reciprocity. Dr. Hill seconded the motion. The motion carried.

Pharmacy Technician Andrew Scott Thompson

At the March 24-25, 2010 Mr. Thompson application was presented to the board. Mr. Thompson answered yes to the question that asked “Are there any charges pending against you” After discussion, Dr. Hill made the motion to deny Mr. Thompson’s application for registration

as a pharmacy technician until charges or the court proceedings are cleared. Dr. Bess seconded the motion. The motion carried.

Mr. Thompson has submitted a new application and answered **no** to all the questions on the application concerning charges and convictions.

After discussion, Dr. Warren made the motion to deny the application. Dr. Warren withdrew the motion. Dr. Warren made the motion to have Mr. Thompson appear before the board. Dr. Stephens seconded the motion. The motion was rescinded. After further discussion, Ms. McDaniel made the motion asked Mr. Thompson for additional documentation concerning the crimes by the end of the meeting. Dr. Stephens seconded the motion. Dr. Warren amended the motion to ask that Mr. Thompson appear before the board if he couldn't provide the documents. Dr. Hill seconded the motion. The motion carried. Dr. Grinder spoke with Mr. Thompson during the break and Mr. Thompson provided the additional information. After discussion, Ms. McDaniel made the motion to approve Mr. Thompson application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried.

Angela Denise Holloway

Ms. Holloway submitted an application for registration as a pharmacy technician. Ms. Holloway marked yes to the question that asked "Have you been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)? Ms. Holloway was charged with Driving while suspended/revoke/license and theft up to \$500.00 on March 24, 1994. She pled guilty and paid \$765.25. She violated her probation on September 10, 1998. The cases are now closed.

After discussion, Dr. Stephens made the motion to approve Ms. Holloway's application for registration as a pharmacy technician. Ms. McDaniel seconded the motion. The motion carried.

Travis Earl Langston

Mr. Langston submitted an application for registration as a pharmacy technician. Mr. Langston marked yes to the question that asked "Have you been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)? Mr. Langston was charged with Vandalism in April 2002.

After discussion, Dr. Kizer made the motion to approve Mr. Langston's application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried.

Whitney B. Andrews

Ms. Andrews submitted an application for registration as a pharmacy technician. Ms. Andrews marked yes to the question that asked "Have you been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)? Ms. Andrews was charged with domestic vandalism on August 7, 2005. She

pled guilty and paid \$150.00 restitution with 11 months and 29 days in the county workhouse which was suspended for good behavior and she was placed on probation. On August 19, 2005, Ms. Andrews was charged with public intoxication. She pled guilty and had 30 days in the workhouse suspended.

After discussion, Ms. McDaniel made the motion to approve Ms. Andrew's application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried.

Brittany Nicole Montanez

Ms. Montanez submitted an application for registration as a pharmacy technician. Ms. Montanez marked yes to the questions that asked "Have you ever been convicted of a felony?" and "Are there any charges pending against you?" On July 15, 2010, Ms. Montanez was charged with aggravated assault, deadly weapon, intent/knowingly. Case is pending.

After discussion, Ms. McDaniel made the motion to deny Ms. Montanez's application for registration as a pharmacy technician until the charges have been cleared and she must submit the documents to the board. Dr. Stephens seconded the motion. The motion carried. Ms. Montanez can reapply for registration as a pharmacy technician with proper documentation showing all charges have been cleared.

Heather Marie Birdsong

Ms. Birdsong submitted an application for registration as a pharmacy technician. Ms. Birdsong marked yes to the question that asked "Have you been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?" Ms. Birdsong was charged with simple possession on May 14, 2008. The charge was dismissed on November 19, 2009 and expunged October 29, 2010. On June 7, 2008, Ms. Birdsong was charged with driving on a revoked license. Ms. Birdsong has a valid license effective March 24, 2010.

After discussion, Ms. McDaniel made the motion to approve Ms. Birdsong's application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried.

Waiver Requests

Board rule 1140-3-.14

Dr. Hill made the motion to approve the request from **Alan Welch, D.Ph.** to be PIC at Mercy Medical West and Mercy Surgery Center. Dr. Warren seconded the motion. The motion carried.

Dr. Stephens made the motion to approve the request from **Ocpivia J. Stafford, D.Ph.** to be PIC at Methodist Healthcare Outpatient Tower and Methodist Hospital Outpatient Tower Pharmacy. Dr. Hill seconded the motion. The motion carried.

Dr. Hill made the motion to approve the request from **Catherine B. Simpson, D.Ph** to be PIC at Caldwell Apothecary and Upchurch & Simpson Apothecary. Dr. Warren seconded the motion. The motion carried.

Ms. McDaniel made the motion to approve the request from **James W. Munsey, R.Ph.** to be PIC at Allied Specialty Pharmacy and Munsey Pharmacy. Dr. Kizer seconded the motion. The motion carried.

Board rule 1140-1-.07

Dr. Stephens made the motion to approve the request from **Stephen R. Ross, D.Ph** to waive the internship hours but Dr. Ross must successfully take and pass the MPJE. Dr. Hill seconded the motion. The motion carried.

Dr. Hill made the motion to approve the request from **Cheryl C. Woodruff, D.Ph.** to waive the internship hours but Dr. Woodruff must successfully take and pass the MPJE. Dr. Warren seconded the motion. The motion carried.

Dr. Warren made the motion to approve the request from **John Tyner, D.Ph.** to waive the internship hours but Dr. Tyner must successfully take and pass the MPJE. Dr. Hill seconded the motion. The motion carried.

Board rule 1140-1-.12(3)(d) and (e)

Dr. Warren made the motion to approve the request from **Dave Cjoso, R.Ph.** from Schnucks Pharmacy to waive the requirement for the pharmacy to be one hundred and eighty (180) square feet and have hot and cold running water. Dr. Hill seconded the motion. The motion carried.

Dr. Hill made the motion to approve the request from **James Axmacher, R.Ph.** from PharmaDax, LLC to waive the requirement for the pharmacy to be one hundred and eighty (180) square feet and have hot and cold running water. The practice site is approximately one hundred and fifty (150) square feet Ms. McDaniel seconded the motion. The motion carried.

Board rule 1140-1-.04

Dr. Warren made the motion to approve **Moon Hee Kim, Ph. D.** request to count the internship hours obtained under the direct supervision of a US licensed pharmacist at the US Army Hospital located in Korea as four hundred (400) non traditional hours. Dr. Stephens seconded the motion. The motion carried.

Consent Orders

Dr. Hill made the motion to accept the consent orders for revocation. Ms. McDaniel seconded the motion. The motion carried.

Revocation

Kevin Lyles, D.Ph.
Rachel Jarrell, RT
Kimberly Christianson, RT
Latisha Burch, RT
Laura McConnell, RT
Robert Russell Moon, D.Ph.
Donna Faye Raines, RT
Crystal Earls, RT
Brenton Kurtis Bolling, RT

Director's Report

Dr. Wilson presented to the board the Pharmacist Assessment for Remedial Evaluation (PARE) submitted by the National Association of Boards of Pharmacy (NABP). The PARE will assist different boards of pharmacy in the decision making process for a pharmacist who may be appealing for licensure re-instatement or are in a situation of questionable competence in terms of practice ability. The assessment will include clinical pharmacy practice, professional ethics, and medication safety management. The assessment is expected to be available during the fourth quarter of 2011. The fees, testing windows and scheduling have not been determined by NABP.

Dr. Grinder informed the board that there was a miscommunication between the board and LexisNexis concerning adding a printable PDF version of the law book on the board's website. LexisNexis gave a quote that was for viewing only and that the quote did not include applicants and/or licensee being able to print the law book. Dr. Grinder stated that the administrative office is exploring other possibilities.

Dr. Wilson asked Dr. Grinder for a Sunset update. The Board of Pharmacy went before the Governors Operations Committee for Sunset Review. The board was not renewed and is in a one year wind down period. Ms. Miller stated that there were several boards that are technical in wind down and it just means that the matter will be taken up by the legislature when it convenes.

Dr. Grinder presented to the board a copy of the board's policy statements for their review. At the September 20-21, 2010 board meeting the board voted on a new policy concerning the renewal of pharmacy technician registration. Dr. Grinder asked that the board review the policy statements to see if there are any updates or corrections needed.

Tennessee Board of Pharmacy
November 15-16, 2010
Board Meeting

Dr. Grinder presented a report on the number of licensees through June 30, 2010. There were a total of 8,972 pharmacists, 15,548 pharmacy technicians, 2,208 pharmacies, 1,603 manufacturer/wholesaler/distributors and 218 researchers licensed in Tennessee.

At the September 21-22, 2010 board meeting, Dr. Kizer suggested that the board discuss physician dispensaries, namely the growing number of nurse practitioners and diet clinics that are dispensing medications. Some dispensaries are using dispensing machines. Dr. Grinder stated that most of the complaints that the board has investigated are not within the board's purview because they are under the auspice of the Board of Medical Examiners and that many have stopped due to the low margins that they are receiving.

Dr. Grinder stated that in the past the Board had a staff person to carry out audits on a percentage of licensees for continuing education hours. Health Related Boards has a Continuing Education Unit that will conduct the audit for the board. The Continuing Education Audit, audits five (5) percent of pharmacists when they renew each month. As of November 2010, ninety-five (95) pharmacists have been audited and only four (4) are in non compliance. Three (3) of the licensees were issued deficiency letter for not submitting the required numbers of continuing education hours and one (1) of the licensees failed to contact the Compliance Unit even after receiving the second notice from the unit via certified mail. Dr. Wilson asked what happens to the licensee that failed to contact the Compliance Unit. Dr. Grinder stated that we will open a complaint against the licensee. Dr. Wilson asked about the three licensees that were deficient. Ms. Miller stated that the normal process is that the licensees that are noncompliant will be reviewed by the board. Other boards have established a standard civil penalty to be assessed, and the board staff prepares an Agreed Citation. The Agreed Citation was drafted by the Office of General Counsel so that Health Related Boards administrative staff could handle the paperwork for the deficiency cases. The Agreed Citation has to be approved by the board once it is signed by the licensee. Dr. Wilson stated that the board will think about it and discuss it again at the January meeting.

Dr. Grinder informed the board of legislative updates concerning **Public Chapter 1084** deals with the background check for healthcare provider. **Public Chapter 795** states that scheduled II controlled substances must be on a separate prescription order starting January 1, 2011. Dr. Wilson stated that one concern is that physician and hospitals may not know that this law exists. Dr. Baeteena Black stated that the practical solution that was offered is that other documents can be created for the prescriptions on the same form as the controlled substances and can be confirmed as verbal orders. After discussion, Ms. McDaniel asked Dr. Black if this Public Chapter 795 can be amended to clarify prescription or prescriptions. Dr. Black stated that it can be amended and requested an expression of concern from the board once the legislative session convenes. Dr. Warren asked if the board can draft a policy statement stating that the board interprets that controlled substances written on one prescription order is valid. **Public Chapter 663** deals with reporting doctor shoppers and allows healthcare providers to share the information with law enforcement thirty days prior of treatment. This law does not pertain to pharmacists.

Tennessee Board of Pharmacy
November 15-16, 2010
Board Meeting

Ms. Miller gave a report on the National Association of State Controlled Substances Administrators (NASCSA). Ms. Miller stated that a representative from Drug Enforcement Agency (DEA) was in attendance. Dr. Wilson had asked about state action on carisoprodol (Soma). Ms. Miller stated that there is a proposal to place this drug as a schedule IV based on a recommendation by HHS and an evaluation by the DEA. There was an Administrative Hearing that was concluded in August 2010 and the DEA is drafting regulations. The manufacturer can appeal after the Administrative Law Judge's ruling has been issued. The Manufacturer asserts that carisoprodol is not an abusable substance. Ms. Miller also stated that the other scheduling actions by the DEA concern propofol, betanatrexal and salvia. Dr. Kizer asked Ms. Miller if the DEA mentioned Tramadol during the discussions. Ms. Miller stated that it wasn't mention as something being currently reviewed by the DEA. The meeting also covered the disposal of controlled substances and the Safe Disposable Act of 2009 that was recently signed by the President. The DEA will prepare regulations. For National Take Back Day which was held on September 25, 2010, there were 4000 collection sites and 3000 state and local participants. Ms. Miller stated that one of the agenda items pertained to grants available for the Controlled Substance Monitoring Database (CSMD). Some of the grants awarded have been used for funding marketing plans, letting the community know about the database, equipment purchases, website development and development for interstate sharing partnerships. Ms. Miller has held a meeting with Walter Philpot, Statistician II, who works with the CSMD, Dea Smith a liaison from Ms. Miller's office and IT representatives from the department concerning the Request for Proposal (RFP) that is in process for the provider of the system. Ms. Miller stated that one of the things that they have discovered during this process is that the system is able to generate unsolicited letters to prescribers letting them know that a patient is doctor shopping. A ruling from OGC is needed before we can generate the letters and if the Committee approves the procedure, then we will begin to implement this process.

Dr. Hill made the motion to adjourn at 4:55 p.m. Dr. Warren seconded the motion. The motion carried.

November 16, 2010

The Tennessee Board of Pharmacy convened on Tuesday, November 16, 2010 in the Poplar Room, 227 French Landing, Nashville, TN. A quorum of the members being present, the meeting was called to order at 8:16 a.m. by Dr. Wilson, president.

Minutes

The minutes from the July 14-15, 2010 meeting were presented. After discussion, Ms. McDaniel made the motion to approve the amended July 14-15, 2010 minutes. Dr. Kizer seconded the motion. The motion carried. The minutes from the September 21-22, 2010 meeting were presented. After discussion, Dr. Kizer made the motion to accept the minutes as presented. Dr. Warren seconded the motion. The motion carried.

Medco/Accredo

Dr. Grinder introduced Rod Presnell, Director of Pharmacy Regulatory Group for Medco Health Solutions, Inc. Medco/Accredo is appearing before the board because of the discussion at the last board meeting concerning what is the definition of campus site and, the practice of pharmacy and if the same pharmacy has two different addresses, how do you license them. Mr. Mezer stated that this issue concerns the 1620 and the 1640 buildings that Medco/Accredo has in Memphis, TN. The 1620 building is used for dispensing and the 1640 building is considered the overflow building and dispensing does not occur in that building. Mr. Mezer stated that after several discussions with Mr. Presnell, the question is “what is the definition of accepted, solicited and collected” which is referenced in board rule 1140-3-.04(9). Mr. Mezer stated that if everything is coming into the 1620 building which has the drugs and then electronically inputted at the 1640 building, does it constitute accepting at the 1620 building? Mr. Presnell stated that the 1620 building is the licensed pharmacy and all information entered into Medco/Accredo’s common database frame references the 1620 address. Dr. Hill asked if the order is transmitted, the computer address is 1620 building and they are actually receiving orders at the 1620 building and processed at the 1640 building but dispensed out of the 1620 building. Mr. Presnell stated that this was correct. Dr. Hill asked if pharmaceutical care is in 1640 building which our rules state that is not site specific. Mr. Presnell stated that they may also speak to a physician’s office and take the information and key it into the computer which is on the common database frame. Mr. Mezer referred the board to rule 140-3-.02 which states “A pharmacist may compound and dispense prescription drugs and devices and related materials only in a pharmacy practice site which is duly licensed by the board and which operates in compliance with Tennessee and federal laws and rules governing the practice of pharmacy. The practice of the knowledge skills of pharmacy is not pharmacy practice site dependent. However, any person practicing any aspect of the art and science of pharmacy must be licensed by the board.” Mr. Mezer asked the board if its interpretation is that the acceptance of orders at 1620 and processing at 1640 building meet the requirement for single/one license. Dr. Hill asked if all of the pharmacists in the 1640 building are licensed. Mr. Presnell stated that all pharmacists at the 1640 building are licensed. Mr. Mezer stated that he did clarify with Mr. Presnell that all of the pharmacy technicians are registered, under direct supervision of a pharmacist and that all ratios have been met. Dr. Stephens asked if they are asking to be able to operate under one license. Mr. Presnell stated that this was correct. Dr. Hill asked Mr. Mezer if board rules 1140-1-.03(24), 1140-1-.01 (23) and T.C.A. 63-10-204 (32) are all that apply to this situation? Mr. Mezer referenced rule 1140-3-.05 which states that “All medical and prescription orders shall be received or accepted and compounded and dispensed from a pharmacy practice site which is in a building permanently located and non-mobile in nature. In case of emergency, the board may waive this rule upon request.” After discussion, Dr. Stephens made a motion that, pursuant to board rule 1140-3-.04(9) and the interpretation that the practice of pharmacy is not site specific, the 1640 building does not need to be licensed as a pharmacy. Dr. Kizer seconded the motion. The motion carried. Dr. Warren was recused.

17. Case No.: L10-PHR-RBS-2010002211

Complaint arises from a routine inspection. Pharmacy board investigator observed one technician working on an expired registration. She worked for 11 months.

Recommendation: authorize formal hearing, \$900 cp to PIC for unregistered tech, \$100 to tech for expired registration.

Dr. Hill made the motion to authorize a formal hearing with a \$900.00 civil penalty to the PIC for the unregistered technician and a \$100.00 civil penalty to the technician for an expired registration. Ms. McDaniel seconded the motion. The motion carried.

18. Case No.: L10-PHR-RBS-2010002171

Respondent technician admitted to loss prevention to stealing 7,191 Hydrocodone 10/500 for personal use.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Stephens made the motion to **authorize a formal hearing** for revocation. Dr. Warren seconded the motion. The motion carried.

19. Case No.: L10-PHR-RBS-2010002191

Complaint arises from a routine inspection. Pharmacy board investigator observed 3 patients pick up medication without an offer to counsel.

Prior discipline: none

Recommendation: authorize formal hearing: \$1000 cp for dispensing and \$3000 to pharmacy for counseling with all but \$1000 suspended pending a store specific plan of correction and LoI to PIC for counseling.

Dr. Hill made the motion to **authorize a formal hearing** with \$1000.00 civil penalty for dispensing, a \$3000.00 civil penalty to the pharmacy for counseling with all but \$1000.00 suspended pending a store specific plan of correction and a **Letter of Instruction** to the PIC for counseling. Dr. Warren seconded the motion. The motion carried.

20. Case No.: L10-PHR-RBS-2010002321

Respondent technician admitted to loss prevention to stealing 700 Hydrocodone of different strengths for personal use.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Warren made the motion to **authorize a formal hearing** for revocation. Ms. McDaniel seconded the motion. The motion carried.

21. Case No.: L10-PHR-RBS-2010002151

Respondent technician admitted to loss prevention to stealing 11,422 Hydrocodone 10/500 and 2315 Alprazolam 2mg for resale.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Stephens made the motion to **authorize a formal hearing** for revocation. Ms. McDaniel seconded the motion. The motion carried.

22. Case No.: L10-PHR-RBS-2010002091

Complaint arises from a routine inspection. Pharmacy board investigator found one technician working on an expired registration for 21 months.

Prior discipline: none

Recommendation: authorize formal hearing: \$1,900 cp to PIC and \$100 to technician.

Dr. Warren made the motion to **authorize a formal hearing** with \$1900.00 civil penalty to the PIC and \$100.00 civil penalty to the technician. Dr. Stephens seconded the motion. The motion carried.

23. Case No.: L10-PHR-RBS-2010002031

Complaint alleges that her prescription for Copaxone was not filled on time and as a result was without her medication for 10 days. Respondent replied that the patient had

run out of refills and that they contacted the doctor for authorization for a renewal. The renewal was for a 90 day supply, but the patient asked for a 30 day supply based on her insurance not paying for a 90 day one. The pharmacy filled it as 90 days and it took a week of the patient calling to get the prescription filled as 30 days and shipped out.

Prior discipline: multiple, nothing big

Recommendation: LoW for violation of 1140-2-.01(1) “A pharmacist shall hold the health and safety of patients to be the first consideration and shall render to each patient the full measure of the pharmacist’s ability as an essential health practitioner.”

Dr. Stephens made the motion to authorize a formal hearing with a \$500.00 civil penalty for violation of board rule 1140-2-.01(1) “A pharmacist shall hold the health and safety of patients to be the first consideration and shall render to each patient the full measure of the pharmacist’s ability as an essential health practitioner”, along with a Letter of Warning. Ms. McDaniel seconded the motion. The motion carried. Dr. Warren was recused.

24. Case No.: L09-PHR-RBS-2009001911

Complaint was previously presented to the board. Complainant reports that 11 out of 39 babies born in a one week time frame had Apgar scores of 5 or less at one minute after birth. Staff noticed that the babies responded to the administration of Narcan. All of the mothers had received epidural anesthesia that was received from Respondent manufacturer. The hospital pharmacy removed all 0.25% Bupivacaine for Epidural use that was received from the Respondent. The hospital sent one bag from the suspected lot number back to Respondent. Respondent performed tests and informed the hospital that the bag contained Hydromorphone and not Bupivacaine as labeled. All of the babies had positive outcomes in the end.

Board authorized a cp of \$11,000. Based on this board’s history of cutting the fine in half for self reporting, my recommendation is to fine them \$5,500.

Prior discipline: none

Recommendation: authorize formal hearing, \$5,500 cp to manufacturer/wholesaler/distributor

Dr. Hill made the motion to **authorize a formal hearing** with a \$5500.00 civil penalty to the manufacturer/wholesaler/distributor. Dr. Warren seconded the motion. The motion carried.

25. Case No.: L10-PHR-RBS-2010002011

Complaint alleges that her mother's 2 prescriptions for warfarin were in the wrong bottles. She had one for 1mg and the other for 5mg. There was no proof provided and the pharmacist insisted that they double checked the quantity and type of drug.

Prior discipline: none

Recommendation: dismiss

Dr. Hill made the motion to **accept counsel's recommendation**. Dr. Stephens seconded the motion. The motion carried.

26. Case No.: L10-PHR-RBS-2010002021

Complaint alleges that her mother's prescription for warfarin 5mg was dispensed as warfarin 1mg. She had one prescription for 1mg and one for 5mg. She is directed to take the 5mg daily and add 1mg on Monday, Wednesday, and Friday. The pharmacy responded that the patient asked for her blood thinner medication to be refilled and the pharmacy filled the 1mg when the patient wanted the 5mg.

Prior discipline: none

Recommendation: dismiss

Dr. Kizer made the motion to **accept counsel's recommendation**. Dr. Hill seconded the motion. The motion carried.

27. Case No.: L09-PHR-RBS-2009000821

Respondent pharmacist was convicted of a felony for distributing steroids to patients throughout the country without a legitimate doctor patient relationship.

Prior discipline: none

Recommendation: revoke

Dr. Stephens made the motion to **authorize a formal hearing** for revocation. Dr. Hill seconded the motion. The motion carried.

28. Case No.: L10-PHR-RBS-2010002331

Respondent pharmacist was arrested for having controlled and other legend drugs at his home that he did not have a legitimate prescription for. Respondent also had street drugs at his home.

Prior discipline: 6/4/07—suspension, re-instated 1/13/09

Recommendation: revoke

Dr. Hill made the motion to **authorize a formal hearing** for revocation. Dr. Warren seconded the motion. The motion carried.

29. Case No.: L05-PHR-RBS-200503821

Respondent was being investigated by law enforcement for large shortages of CS at his pharmacy. After 5 years of investigating, no charges have been brought.

Prior discipline: 3/24/92—suspension, re-instated 3/21/97; 1/26/00—suspension, re-instated 5/20/2000.

Recommendation: dismiss

Dr. Stephens made the motion to **accept counsel's recommendation**. Dr. Hill seconded the motion. The motion carried.

30. Case No.: L10-PHR-RBS-2010000011

Respondent pharmacy was investigated by DEA for large number of CS ordered. Multi-agency investigation revealed that a technician was responsible and she admitted to it.

Prior discipline: none

Recommendation: dismiss

Dr. Warren made the motion to **accept counsel's recommendation**. Ms. McDaniel seconded the motion. The motion carried.

31. Case No.: L10-PHR-RBS-2010002341

Respondent technician admitted to law enforcement to stealing multiple and large quantities of controlled substances for resale.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Hill made the motion to **authorize a formal hearing** for revocation. Ms. McDaniel seconded the motion. The motion carried.

32. Case No.: L10-PHR-RBS-2010001171

Complaint alleges that respondent doctors' office has a non-licensed automated dispensing machine. After investigation, it was determined that they are only dispensing to their patients and that this falls under the BME.

Prior discipline: none

Recommendation: dismiss

Dr. Warren made the motion to **accept counsel's recommendation** and to refer the complaint to the Board of Medical Examiners. Dr. Stephens seconded the motion. The motion carried.

33. Case No.: L10-PHR-RBS-2010001971

Respondent pharmacist voluntarily surrendered his NH license while under investigation. The NH records are not available because there was no formal trial and his file in the Board office is missing. No evidence to proceed.

Prior discipline:

Recommendation: dismiss

Dr. Hill made the motion to **accept counsel's recommendation**. Dr. Warren seconded the motion. The motion carried.

34. Case No.: L10-PHR-RBS-2010002101

Complaint alleges that her son's eye medication was dispensed as ear medication. Respondent pharmacist stated that the verbal prescription was taken at 7:30 p.m. on July 3rd and the technician wrote the prescription as Cortisporin Otic Drops to use 1-2 drops in the eye 4 times a day. When the pharmacist reviewed the order, she attempted to call the doctors office, but they were closed, and had been since 12 pm. They decided that it should be filled but with the instructions to place in the ear. The patient picked up the medication at 3:30 a.m. and was counseled to place the drops in the ear. The label also instructed to place in the ear.

Prior discipline: none

Recommendation: dismiss

Dr. Warren made the motion to issue a **Letter of Instruction** to the pharmacist regarding the missed opportunity for communication in pharmaceutical care which could have resulted in a better outcome for the patient regarding their health and safety. Dr. Stephens seconded the motion. The motion carried.

35. Case No.: L10-PHR-RBS-2010001531

Respondent pharmacist was terminated for carrying a gun at work. He had a license. He is under contract with the TPRN and still has advocacy.

Prior discipline: 3/30/07—surrender of license, 6/9/09, re-instated with 5 year probation

Recommendation: dismiss

Dr. Stephens made the motion to accept counsel's recommendation. Dr. Kizer seconded the motion. The motion carried.

36. Case No.: L10-PHR-RBS-2010002121

Complaint arises from a routine inspection. Pharmacy board investigator found one technician working on an expired registration for 1 month.

Prior discipline: none

Recommendation: authorize formal hearing: \$100 cp to PIC and \$100 to technician.

Dr. Warren made the motion to **authorize a formal hearing** with \$100.00 civil penalty to the PIC and a \$100.00 civil penalty to the technician. Dr. Kizer seconded the motion. The motion carried.

37. Case No.: L10-PHR-RBS-2010001451

Respondent pharmacist was alleged to not perform proper DURs. After a review of the pharmacy records, the pharmacy and pharmacists failed to perform proper DURs on some of the rxs refilled 19 to 20 days early.

Prior discipline: none

Recommendation: authorize formal hearing, \$500 cp to dispensing

Dr. Stephens made the motion to **authorize a formal hearing** with a \$500.00 civil penalty to the dispensing pharmacist. Dr. Kizer seconded the motion. The motion carried.

38. Case No.: L10-PHR-RBS-2010002251

Complaint alleges that respondent pharmacy is not reporting to the CSMD. They are.

Prior discipline: none

Recommendation: Dismiss

Dr. Hill made the motion to **accept counsel's recommendation**. Dr. Warren seconded the motion. The motion carried.

General Discussion

Dr. Wilson presented a letter to the board from the Department of Mental Health and Development Mental Disabilities requesting that the board appoint a Tennessee Board of Pharmacy staff member who can serve as primary contact from the Department of Health to the Department of Mental Health and Development Mental Disabilities to facilitate a timely response of state action relating to the scheduling of controlled substances, being involved in responding to notices of federal scheduling actions, review annually of the existing schedule of controlled substances, participating in the annual rulemaking hearing and updating Tennessee's list of controlled substances. After discussion, Dr. Warren made the motion to have the Acting Executive Director serve as the primary contact from the Department of Health and once a new Executive Director is appointed they will become the primary contract person. Dr. Hill seconded the motion. The motion carried.

Dr. Wilson also stated that she and Dr. Grinder spoke with Jason Carter with the Department of Mental Health and Development Mental Disabilities concerning Carispodol and whether it has been designated as controlled substances. Mr. Carter stated that it is in the rulemaking stages.

Dr. Wilson presented House Bill 2284 to the board. House Bill 2284 Section 1A states “On and after October 1, 2010, before employing or contracting with any person would be providing direct patient care, for whom a background check has not been completed, a health care professional licensed under any chapter of title 63 or title 68, chapters 24 and 140, shall initiate and perform a “registry check” Dr. Wilson asked Dr. Grinder how is the word licensed defined, since the technicians are registered and not licensed. Does this law cover pharmacy technicians? Dr. Grinder stated that he spoke to Dr. Black who stated that the legislators did not make the distinction between registered and licensed and that the legislative intent would be that the pharmacy technician would be required under this law because they are involved in direct patient care. Dr. Wilson asked if the current employees are grandfathered under this new law. Mr. Mezer stated that the law says “On and after October 1, 2010”. Dr. Warren asked if it this was the business background check or the board’s background check. Mr. Mezer stated that it is the business’s background check.

Dr. Wilson asked the board if they have any questions concerning Public Chapter 795. Dr. Warren asked if there was anything that the board could do to assist the pharmacists. The consensus of the board was that two prescriptions for Scheduled II controlled substances written on one prescription order was valid and asked if the board needed to do anything until the legislature could clarify. Dr. Warren presented a policy statement which states “The Tennessee Board of Pharmacy interprets or deems that two scheduled controlled substances on one prescription order satisfies the requirement of Public Chapter 795” and asked Mr. Mezer is this something that the Board can do. Mr. Mezer stated that the board can interpret their own rules and give an opinion but when it comes down to the statute, he does not advise that the board considers a policy statement. Dr. Warren asked if it can done as an opinion by the board and state “It is the opinion of the board that one or more scheduled controlled substances on one prescription order satisfies the requirement of Public Chapter 795.” Dr. Wilson asked if this can be placed in the board’s newsletter. Mr. Mezer stated that he would not recommend the opinion to be placed in the newsletter because of the way it may be interpreted by the pharmacists out in the field. Dr. Kizer asked if the board has anyway to address this issue without waiting for the legislative session to reconvene to make changes. Mr. Mezer referred to board T.C.A. §63-10-204(38) which states “ Prescription order” means and includes any order, communicated through written, verbal or electronic means by a physician, certified physician assistant, nurse authorized pursuant to §63-6-204, who is rendering service under the supervision, control and responsibility of a licensed physician, and who meets the requirements pursuant to §63-7-207(14), dentist, veterinarian, optometrist authorized pursuant §63-8-102(12), or other allied medical practitioner, for any drug, device or treatment. Nothing in this chapter shall prohibit the verbal communication of a direct order for a prescription from a physician to a pharmacist by registered nurse or physician assistant pursuant to §63-6-204”. Mr. Mezer asked since treatment is not define, would a prescription order for two controlled substances be consider treatment if it was for the same condition? Dr. Warren stated that it is a concern that it could impact patient care.

Dr. Stephens stated that Dr. Black indicated yesterday that this can be fixed legislatively when the legislative session reconvenes in January. Dr. Stephens stated that this is the best route for the board to take.

Rules

Mr. Mezer asked the board to authorize a rulemaking hearing for January 2011. The final draft is still in his office for an internal review. Some of the following purposed rules changes are concerning criminal background check will be that all pharmacist, pharmacy technicians and owners of manufacturer/wholesaler/distributors shall submit from the vendor identified in the application for licensure directly to the board; waiver of board rule 1140-3-.03(9) add subsection (a) board may consider a waiver upon request; board rule 1140-4-.03 board may consider a waiver for space requirement; delete fee for law book and add rule 1140-1-.15 that if there is a state or federal declared emergency that the board may waive requirements. After discussion, Dr. Stephens made the motion to authorize a rulemaking hearing for the January 2011 meeting. Dr. Warren seconded the motion. The motion carried.

Interviews

The Board interview four candidates for the Executive Director's position of the Tennessee Board of Pharmacy.

The meeting adjourned at 4:00 p.m.